

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of a general ruling
s. 288 – application for declaration of policy

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B753 of 2002) AND The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B755 of 2002)

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER EDWARDS

7 August 2002

Applications for Declaration of General Ruling – Submissions by Unions for flow on of wage increase decided by AIRC – Applications granted – *Industrial Relations Act 1999* ss. 287, 288.

DECISION

- [1] On 9 May, 2002 a Full Bench of the Australian Industrial Relations Commission (AIRC) released its decision in the matter of the *Safety Net Review – Wages May 2002* AIRC (PR002002) 9/05/2002 Giudice J, Ross VP, McIntyre VP, Watson SDP, Harrison SDP, Lewin C and Hoffman C. By that decision the Full Bench of the AIRC awarded a safety net adjustment of \$18 per week in award rates with the safety net adjustment being capable of absorption into overaward payments. The decision increased the federal minimum wage by \$18 per week and varied allowances that relate to work and service increments.
- [2] On 13 May, 2002 the Queensland Council of Unions (QCU) filed with the Industrial Registry an application (B753 of 2002) which, following amendment, seeks to flow on those aspects of the decision of the Full Bench of the AIRC. No change is sought, at this time, to the *Statement of Principles* (2001) 167 QGIG 353 except for consequential amendments resulting from the increase in award rates and the Queensland Minimum Wage.
- [3] On the same day The Australia Workers' Union of Employees, Queensland (AWU) filed a similar application (B755 of 2002).
- [4] Both the QCU and the AWU sought to have both matters joined. There was no opposition to that application and both matters were joined. Both organisations sought an operative date of 1 September, 2002. The applications essentially seek:
 - an increase of \$18 per week in all award rates of pay by way of General Ruling;
 - an increase in allowances which relate to work or conditions and service increments of 3.5% by way of General Ruling;
 - an adjustment of the Queensland Minimum Wage for workers regulated by industrial instruments from \$413.40 per week to an amount of \$431.40 per week for full-time adult employees, and for junior, part-time and casual employees, proportionate amounts by way of Statement of Policy; and
 - the maintenance of the 2001 Declaration of Policy dealing with the *Statement of Principles* except for changes in operative dates and the quantum of wage adjustment resulting from these applications.
- [5] Both the QCU and the AWU foreshadowed a future application in respect of the *Statement of Principles*. For that reason we have left unchanged the title of the statute at Principle 9(c)(4).
- [6] On 22 July, 2002 we published a Declaration of Intent to satisfy the duty cast upon the Commission by s. 287(3) of the *Industrial Relations Act 1999*. The *Declaration of Intent* is now reported at (2002) 170 QGIG 404.
- [7] On 31 May, 2002 the New South Wales Industrial Relations Commission handed down its decision and awarded the \$18 per week increase: see *State Wage Case 2002* [2002] NSWIRComm 118. Similarly on 10 June, 2002 the Western Australian Industrial Relations Commission handed down its decision to flow-on the \$18 increase: see *State Wage Case 2002* WAIRC 05746. The South Australian Industrial Relations Commission on 28 June, 2002 released its decision and granted a flow on of the \$18 per week increase to employees regulated by South Australian State awards: see *State Wage Case June 2002* [2002] SAIRComm 38.
- [8] The State of Queensland supported the QCU and AWU applications. In so doing, they provided the Full Bench with material which indicated that the Queensland economy had the capacity to absorb the \$18 flow-on to State awards. Further, the State of Queensland contended that the granting of the applications would maintain consistency between the state and federal jurisdictions and ensure that there was no disadvantage for employees on award rates of pay in the Queensland jurisdiction. We have considered the detailed economic data relied upon by the State of Queensland.
- [9] The Australian Industry Group, Industrial Organisation of Employers (Queensland) (AIG) did not oppose the applications and supported the claim for an operative date of 1 September, 2002.
- [10] The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI), in its submissions, did not support the granting of \$18 per week in award rates and the increase of 3.5% in work related allowances and increments. Rather it supported an increase of \$10 per week in award rates and an increase of 1.9% for work related allowances and service increments. Its alternative submission was a phasing in of the \$18 per week increase over two six (6) month periods contending that the impact would be less severe and more manageable by employers. The QCCI did not object to the operative date of 1 September, 2002. Essentially the QCCI's argument was that the AIRC, at the time of making its decision, depended upon economic considerations that were focused nationally. The QCCI drew the Full Bench's attention to certain economic indicators tending to highlight that the Queensland economy is not as strong as the national economy in respect of those indicators. The QCCI, and other organisations, also raised the potential impact of the applications by the QCU (B209 of 2002) and AWU (B308 of 2002) seeking a Statement of Policy in relation to termination, change and redundancy entitlements. These applications are currently before a Full Bench of this Commission.

[11] The position adopted by the QCCI was supported by a number of organisations including:

- the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) who raised the concern of the change to Sunday trading hours and the impact that was likely to have on the competitiveness of smaller retail establishments. The QRTSA opposed the QCCI's position on the operative date of any increase. In so doing the QRTSA sought an operative date of 2 September, 2002 arguing that the pay periods of most small retailers commenced on a Monday and they would experience difficulties with a Sunday operative date;
- the Local Government Association of Queensland Incorporated; and
- the Queensland Hotels Association, Union of Employers (QHA) drew the Full Bench's attention to the combined effect of the terrorist attack of 11 September, 2002 and the collapse of Ansett Airlines on its members. It was submitted that these events had resulted in a significant economic downturn in the tourism industry in Queensland. It is noted however that employees in the hotel industry in South-East Queensland are employed pursuant to an award of the AIRC under which the \$18 per week award increase would flow (or perhaps be absorbed) whilst those in the remainder of the State are employed pursuant to an award of this Commission.

[12] The Australian Sugar Milling Association, Queensland, Union of Employers (ASMA) indicated opposition to the applications but conceded that the granting of the quantum sought by the QCU and AWU would not result in any direct increase in labour costs for the sugar milling industry (except for work related allowances). As all employees in the sugar milling industry are covered by certified agreements that have implemented net increases in wage rates since 1992 in excess of the total safety net adjustments arbitrated in the same period any increase resulting from these applications would be absorbed.

[13] The position adopted by The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers. (RCEAQ) was one of opposition to the \$18 increase. Rather than the \$10 sought by the QCCI the RCEAQ sought an increase of \$9 per week. In seeking the \$9 only, the RCEAQ relied upon circumstances peculiar to the industry. No evidence was called by the RCEAQ in support of its position. Whilst it did seek to rely upon extracts of documents that were attached to its written submission those documents were not properly proved. The submissions made by RCEAQ in respect of the industry generally appeared to be somewhat similar to those submissions made to the Full Bench of the AIRC by Restaurant and Catering Australia. It is apparent that the Full Bench of the AIRC considered those submissions for when looking at the particular industry sectors it concluded at p. 27 that:

"The restaurant and catering industry has experienced reasonable growth in turnover over the past year, although profits have declined as a result of new entrants into the industry."

[14] The arguments advanced by the RCEAQ are similar to those advanced in 2001 and we adopt the following comments of the Full Bench found at *The Australian Workers' Union of Employees, Queensland and Queensland Council of Unions v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Ors* (2001) 167 QGIG 350 at p. 350:

"No attempt was made to press an application for exemption... Granted the legislative opportunity to seek exemption, we are unable to accept that it is consistent with s. 3(a) and (f) or indeed, fair and equitable, to deny the benefit of a Declaration of General Ruling to all employees in order to protect the interests of some employers within a particular industry sector."

[15] The Retailers' Association of Queensland Limited, Industrial Union of Employers (RAQ) is also opposed to the applications submitting that the \$18 increase would represent an addition to most retailers' wages bill of approximately 4%.

[16] The Baking Industry Association of Queensland - Union of Employers (BIA) also opposed the application asserting that an \$18 increase could affect the viability of some operations. Whilst the BIA did not rely upon any evidence, it did submit that the viability of some baking industry operations are such that the operators are now having to work in their operations rather than employing casual staff.

[17] The Queensland Cane Growers' Association Union of Employers and the Queensland Mechanical Cane Harvesters Association, Union of Employers seek the exclusion of the classes of employers which they represent, or in the alternative, some of them from any Declaration of General Ruling which might be made. These applications were scheduled for hearing at the conclusion of the hearing of the QCU and AWU applications.

[18] An application for exemption from any Declaration of General Ruling was also foreshadowed by the QCCI in respect of parties bound by the *Nurses' Aged Care Interim Award - State*. Directions were issued for the conduct of this application and a hearing is scheduled for 13 August, 2002.

[19] The decision of the AIRC indicates that the material before the Full Bench showed some diversity of economic conditions between and within sectors of the Australian economy. Whilst recognising that to be the case the Full Bench of the AIRC concluded that "...the Australian economy can accommodate further reasonable improvements in the safety net of minimum wages of the level we determine in this decision".

[20] We concur with the statement of the Full Bench in *Queensland Council of Unions and The Australian Workers' Union of Employees, Queensland v Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Ors* (2000) 164 QGIG 372 at p. 164 that:

"It cannot reasonably be expected that all state economies will at all times perform in the same way. The Australian Industrial Relations Commission takes account of circumstances in all states and is aware of a likelihood that its decision will flow into particular state industrial systems. It is obviously aware also that its awards may marginally impact differently in different states. There will be times when the Queensland economy outperforms other states and *vice versa*. As long as the discrepancies are not large and consistent, we consider that the proper course is to take the broad view and flow the Federal increase into the Queensland system."

[21] Having considered the submissions of all parties, we are of the view that the applications should be granted. We propose to make the Declaration of General Ruling that has been sought in the applications. The wage adjustment is subject to absorption.

[22] As to the operative date we have decided, after considering the submissions to the contrary, that it will be 1 September, 2002.

Dated 7 August 2002.

D.R. HALL, President.

D.M. LINNANE, Vice President.

K.L. EDWARDS, Commissioner.

Appearances:

Mr J. Sharpe for The Australian Workers' Union of Employees,

Ms S. Davis for the Australian Industry Group, Industrial Organisation of Employers (Queensland).

Mr R. Beer for the Local Government Association of Queensland Incorporated.

Mr G. Trost for the Queensland Canegrowers' Association Union of Employers.

Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.

Mr G. Roberts for The Baking Industry Association of Queensland - Union

Queensland.

Ms D. Ralston for the Queensland Council of Unions.

Ms K. Stephen and Dr S. Winocur for the Crown.

Mr J. Dwyer and Ms S. Lindsay for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Ms L. Vanderstoep for the Retailers' Association of Queensland Limited, Union of Employers.

Mr D. Matley for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

of Employers.

Mr J. Moore for the Queensland Hotels Association, Union of Employers.

Mr M. Proctor for the Australian Sugar Milling Association, Queensland, Union of Employers.

Mr J. Powell for the Queensland Mechanical Cane Harvesters Association, Union of Employers.

Released: 7 August 2002

Hearing Details:

2002 30 May and 22 July.